LOW SOON MOOI

v.

MENTERI HAL EHWAL DALAM NEGERI, MALAYSIA & ANOR.

HIGH COURT MALAYA, PULAU PINANG
WAN ADNAN J
[CRIMINAL APPLICATION NO. 54-13-88]
23 MARCH 1989

ADMINISTRATIVE LAW: *Habeas Corpus - Section 6(1) of Dangerous Drugs (Special Preventive Measures) Act 1985 - Preventive detention - Whether detention order valid - Mala fides - Whether the Act is constitutional - Whether art. 151(3) of the Constitution applicable.*

This is an application for a writ of *habeas corpus* to be issued. The applicant was detained under s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ("the Act"). An order of detention was made by the Deputy Minister against her for a period of 2 years. Section 9(2)(b) of the Act requires a statement stating the grounds on which the order was made and the allegations of fact on which the order was based to be served on the applicant. The grounds of the application were that there was a failure to comply strictly with the provisions of s. 6 of the Act; that the Deputy Minister has no power to act on behalf of the Minister; the failure of the inquiry officer to conduct an independent inquiry; *mala fides* on the part of the police officer; that the Dangerous Drugs (Special Preventive Measures) (Amendment) Act 1988 is unconstitutional; and that art. 151(3) of the Federal Constitution does not apply.

Held:

[1] It is agreed that under s. 6 of the Act, the Minister was required to be satisfied with two matters namely, the "person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs" and that "it is necessary in the interest of public order that such person be detained". Although the word "berpuashati" is mentioned only once in the detention order, reading the paragraph as a whole, it is clear that the satisfaction was in respect of both matters. Further, the need for the second satisfaction was in respect of the first matter. Therefore, if the Minster is satisfied with the second matter he must have been satisfied with the 1st matter.

[2] Art. 43A(2) of the Federal Constitution clearly states that Deputy Ministers have all the powers of the Ministers and in the Interpretation Act 1967 "Minister" means "A Minister of the Government of Malaysia including the Prime Minister and a Deputy Minister."

[3] It is the discretion of the inquiry officer to decide whether to hold an enquiry. If he is satisfied after studying the investigation report that there are reasonable grounds for believing that the person has been associated with drugs there is no need for him to exercise his powers under s. 5(3) of the Act.

[4] There is no *mala fides* established against the police officer. However, in any event to render the detention order invalid what has to be made out is not *mala fides* on the part of a police officer but *mala fides* on the detaining authority i.e. the Minister.

[5] The Dangerous Drugs (Special Preventive Measures) Act 1985 and the amendment Act (1988) are constitutional because they were enacted pursuant to art. 149 of the Federal Constitution.

[6] Though the detention under the Act is only in the interest of public order but when it comes to disclosure of facts the test is the same because s. 14 of the Act protects against the disclosure of facts which are against the national interest. Therefore, art. 151(3) of the Constitution is applicable to protect the non-disclosure.

[Application dismissed.]

Cases referred to:
Re Datuk James Wong Kim Min [1976] 2 MLJ 245
Yeap Hock Seng @ Ah Seng v. Minister of Home Affairs, Malaysia [1975] 2 MLJ 279
Re Tan Sri Raja Khalid b. Raja Harun; Inspector General of Police v. Tan Sri Raja Khalid bin Raja Harun [1988] MLJ 182

Legislation referred to:
Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 3(3), 5(2), (3), 6(1), 9(2) (b), 14
Federal Constitution, arts. 43A(2), 151(3)
Internal Security Act 1960, ss. 8, 16

For the appellant - Y.N. Ngeow (Ngeow & Maurice Gomes)
For the respondent - Abdul Hamid bin Hj. Mohamed, SFC

JUDGMENT

Wan Adnan J:

This an application made for an order that a writ of *habeas corpus* be issued for the release of the applicant.

The applicant was detained pursuant to an order made under s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 (the Act). Section 6(1) of the Act reads as follows:

> 6(1) Whenever the Minister, after considering:
>
> (a) the complete report of investigation submitted under subsection (3) of s. 3; and
>
> (b) the report of the inquiry officer submitted under subsection (4) of s. 5,
>
> is satisfied with respect to any person that such person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs, the Minister may, if he is satisfied that it is necessary in the interest of public order that such person be detained, by order (hereinafter referred to as a "detention order") direct that such person be detained for a period not exceeding two years from the date of such order.

The detention order is in the following form:

> Akta Dadah Berbahaya (Langkah-langkah Pencegahan Khas), 1985
> (Akta 316)
> Perintah Tahanan
> (seksyen 6(1))
>
> Kepada:
>
> Penguasa, Pusat Pemulihan Akhlak,
> Pulau Jerejak, Pulau Pinang.
> Ketua Polis Negara,
> Bukit Aman,
> 50560 Kuala Lumpur.

Semua Polis Di Raja Malaysia Yang Berkenaan.

Bahawasanya saya, Menteri Dalam Negeri, berpuashati yang Perintah ini adalah perlu dibuat ke atas orang yang namanya tersebut di bawah ini dengan tujuan hendak mencegah beliau daripada melakukan apa-apa aktiviti yang berhubungan dengan atau yang melibatkan pengedaran dadah berbahaya.

Nama	Nombor Pengenalan
Low Soon Mooi (P)	7762037 (M)

Oleh yang demekian, pada menjalankan kuasa yang diberi kepada saya dibawah Seksyen 6(1) Akta Dadah Berbahaya (Langkah-Langkah Pencegahan Khas), 1985, maka saya mengarahkan dengan Perintah ini supaya orang yang namanya tersebut di atas ditahan selama dua tahun mulai dari 4 haribulan Disember 1987 di Pusat Pemulihan Akhlak, Pulau Jerejak Pulau Pinang, atau di mana-mana tempat lain sebagaimana yang diarah oleh saya dari semasa ke semasa.

Ditandatangani pada 2 haribulan Disember 1987

T.T Dato' Megat Junid B. Megat Ayob (Dato' Megat Junid bin Megat Ayob) Timbalan Menteri Dalam Negeri, Malaysia.

(Rujukan: KDN.S.205/1182/5-305)

The statement of the grounds on which the order was made and the allegations of fact on which the order was based that was served on the applicant as required by s. 9(2)(b) of the Act is in the following form:

Akta Dadah Berbahaya (Langkah-langkah Pencegahan Khas) 1985

Nama Orang Tahanan:

Low Soon Mooi (P) - No. Kad Pengenalan: 7762037 (M)

Alasan-alasan Yang Atasnya Perintah Itu Dibuat:

Bahawa kamu pernah ada terlibat dengan aktiviti yang berhubung dengan pengedar dadah berbahaya.

Tuduhan-tuduhan Yang Perintah Itu Berasaskan:

Bahawa kamu didapati bergiat mengedar heroin sejak awal 1982 di kawasan Batu Bata, Jalan Ipoh, Kuala Lumpur. Kamu mengedar dadah heroin dalam bentuk tiub dengan harga RM4 dan RM4.50 satu tiub dan bentuk peket berharga RM65 sepekat.

2. Bahawa kamu telah bergiat menyewakan bilik-bilik rumah setinggan kepunyaan kamu di Kampung Batu Bata, Jalan Ipoh, Kuala Lumpur kepada penagih dan pengedar-pengedar heroin untuk dijadikan tempat menghisap, mengedar dan memproses (repack) heroin dari peket ke bentuk tuib.

3. Bahawa kamu mengenakan bayaran sewa di antara RM2 hingga RM7 ataupun kamu minta heroin 1-3 tiub sebagai ganti sewaan bagi sehari, untuk satu bilik kepunyaan kamu kepada penagih dan pengedar yang menggunakan bilik untuk menghisap dan mengedar dadah heroin.

4. Bahawa kamu didapati juga bergiat aktif mengedar dadah heroin dalam bentuk tiub dan mampu mengedar di antara 10-60 tiub sehari kepada penagih tempatan.

Dengan Arahan Menteri Dalam Negeri

(Abdul Aziz bin Muhamad) Penolong Setiausaha Kementerian Dalam Negeri

Tarikh: 2 Disember 1987

(ruj:KDN.S. 205/1182/5-305)

At the hearing of the application, Counsel for the applicant had raised only the following points:

1. Failure to comply strictly with the requirement of law.
2. Deputy Minister has no power to act on behalf of Minister.
3. Failure of inquiry officer to conduct an independent enquiry.
4. *Mala fides.*
5. Dangerous Drugs (Special Preventive Measures) (Amendment) Act 1988 (Act A707) is unconstitutional.
6. Art. 151(3) of the Constitution does not apply.

Point No. 1 **Failure to comply strictly with the requirement of law**

It was submitted that there was a failure to comply strictly with the provisions of s. 6 of the Act. Under the section the Minister was required to be satisfied with two matters, namely, the "person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs" and that "it is necessary in the interest of public order that such person be detained". It was submitted that the detention order states that the Minister was satisfied only with the latter and therefore is invalid.

Lee Hun Hoe CJ (Borneo) in *Re Datuk James Wong Kim Min* [1976]2 MLJ 245 had said:

> Preventive detention is, therefore, a serious invasion of personal liberty. Whatever safeguard that is provided by law against the improper exercise of such power must be zealously watched and enforced by the Court. In a matter so fundamental and important as the liberty of the subject, strict compliance with statutory requirements must be observed in depriving a person of his liberty. The material provisions of the law authorising detention without trial must be strictly construed and safeguards which the law deliberately provides for the protection of any citizen must liberally interpreted. Where the detention cannot be held to be in accordance with the procedure established by the law, the detention is bad and the person detained is entitled to be released forthwith. Where personal liberty is concerned, an applicant in applying for a writ of *habeas corpus* is entitled to avail himself of any technical defects which may invalidate the order which deprives him of his liberty.

Reading the section and the detention order I do not find any failure of strict compliance with the requirements of the section. The detention order says:

> Bahawasanya saya, Menteri Dalam Negeri, berpuashati yang Perintah ini adalah perlu dibuat ke atas orang yang namanya tersebut di bawah ini dengan tujuan hendak mencegah beliau daripada melakukan apa-apa aktiviti yang melibatkan pengedaran dadah berbayaha.

It is true that the word" berpuashati" is mentioned only once but reading the paragraph as a whole it is clear that the satisfaction was in respect of both matters. Further the need for the second satisfaction arises only if there has been satisfaction in respect of the first matter. Therefore if the Minister says he is satisfied with the second matter he must have been satisfied with the first matter.

Point No. 2 **Deputy Minister has no power to act on behalf of Minister**

It was submitted that the section requires the Minister to be satisfied and the detention order says that it was the Minister who was satisfied but the affidavit of Dato' Megat Junid bin Megat Ayob discloses that it was the Deputy Minister who was satisfied.

Article 43A(2) of the Federal Constitution clearly states that Deputy Minister have all the powers of the Ministers. It provides:

> 2. Deputy Ministers shall assist Ministers in the discharge of their duties and functions and for such purpose shall have all the powers of Ministers.

In the Interpretation Act 1967 "Minster" means "A Minister of the Government of Malaysia including the Prime Minister and a Deputy Minister."

Point No. 3 **Failure of inquiry officer to conduct independent inquiry**

It was submitted that under s. 5(3) of the Act the inquiry officer was legally obliged to hold an enquiry.

Section 5(3) states as follows:

> (3) An inquiry officer may, in his discretion, for the purpose of subsection (2):
>
> (a) ...

Section 5(2) states:

> (2) Upon receiving the report under subsection (3) of s. 3, the inquiry officer shall inquire whether there are reasonable grounds for believing that such person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs.

In my view the inquiry officer has a discretion. If from the complete report of investigation submitted to him under s. 3(3) of the Act he is satisfied that there are reasonable grounds for believing that the person has been associated with drugs there is no need for him to exercise his powers under s. 5(3) . In this case the inquiry officer was satisfied by the consideration of the report. He has duly discharged his function.

Point No. 4. ***Mala fides***

The applicant alleged *mala fides* on the part of the police officer Zakaria. I found no *mala fides* established against that officer. Further to render the detention order to be invalid what has to be made out is not *mala fides* on the part of a police officer but *mala fides* on the part of the detaining authority i.e. the Minister. In *Yeap Hock Seng @ Ah Seng v. Minister of Home Affairs, Malaysia* [1975] 2 MLJ 279 Abdoolcader J (as he then was) said:

> But where an order of detention is challenged on the ground of *mala fides*, what has got to be made out is not the want of *bona fides* on the part of the police, but the want of *bona fides* as well as the non-application of mind on the part of the detaining authority which for this purpose must be taken to be different from the police.

There is no allegation of *mala fides* on the part of the Minister and there is no such evidence.

Point No. 5 **Dangerous Drugs (Special Preventive Measures) (Amendment) Act 1988 (Act A707) is unconstitutional.**

This point had already been raised in *Lim Kit Siang v. Menteri Dalam Negeri & 2 Ors.* Penang High Court Criminal Application No. 54-8-88. In this case the learned Judge (Mohd. Dzaiddin Abdullah J) held that the Internal Security (Amendment) Act 1988 (Act A705) was constitutional. The Dangerous Drugs (Special Preventive Measures) Act 1985 and the Amendment Act (1988) (Act A707) were also enacted pursuant to Art. 149 of the Federal Constitution. I agree with the decision of the learned Judge and hold that the Act A707 is constitutional.

Point no 6: **Article 151(3) of the Federal Constitution does not apply**

It was contended that the Minister ought to disclose all facts upon which the Minister's decision was made as art. 151(3) did not protect the non-disclosure. It was argued that this was so because the detention under s. 6(1) the Act was only "in the interest of **public order**" whereas the protection under art. 151(3) was in respect of facts "whose disclosure would in its opinion be against **the national interest**"
(emphasis is mine)

It was further contended that there is a distinction between a detention under the Act and a detention under s. 8 of the Internal Security Act 1960. Whereas the detention under the Internal Security Act is in the interest of national security the detention under the Act is only in the interest of public order. Therefore art. 151(3) does not apply to a detention under the Internal Security Act (see *Re Tan Sri Raja Khalid b. Raja Harun; Inspector General of Police v. Tan Sri Raja Khalid bin Raja Harun* [1988] 1 MLJ 182.

I do not agree with the contention. Section 14 of the Act protects against the disclosure of facts which are against the national interest. Similar provision is contained in s. 16 of the Internal Security Act. The provisions of the two sections merely restate the provision of art. 151(3). When it comes to disclosure of facts the test is "national interest". In my view there is no distinction between the detention under the Act and detention under the Internal Security Act in this respect. Though the detention under the Act is only in the interest of public order but when it comes to disclosure of facts the test is the same and that is, whether the disclosure is against the national interest.

I find that the applicant has failed to show that the detention is unlawful. I therefore dismissed the application.

Also found at [1989] 1 CLJ 1081